

REMARKS

Claims 1-20 are pending in the application. Claims 1, 10, and 18 are the only independent claims. Claims 1-3, 7, 8, 10, 11, 13, 14 and 16-20 are currently under consideration by the Examiner, claims 4-6, 9, 12, 15, and 21 being withdrawn from consideration pursuant to a species-type restriction requirement.

Drawings Applicants note the objection to the drawing on form PTO-948, Notice of Draftsperson's Patent Drawing Review. In response, please find enclosed herewith two (2) formal drawing sheets containing Fig. 1 through Fig. 3, to be substituted for the drawing sheets currently on file in the application.

The enclosed formal drawings are believed to be substantively identical to the informal drawings on file in the application. Because the enclosed drawings include changes as referenced in the Notice of Draftsperson's Patent Drawing Review, the enclosed drawings are formally different from the informal drawings submitted with the application. Specifically, the character of the lines, numbers, letters and references has been corrected in accordance with 37 CFR § 1.84. No new matter has been added.

Claims Rejections - 35 U.S.C. § 103

Claims 1-3, 7, 10, 11 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,961,440, Schweich, Jr. et al. ("Schweich").

Claims 8, 16, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,961,440, Schweich, Jr. et al., in view of U.S. Patent No. 5,853,422, Huebsch et al.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent

No. 5,961,440, Schweich, Jr. et al., in view of U.S. Patent No. 6,537,198, Vinlund et al.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,961,440, Schweich, Jr. et al., in view of U.S. Patent No. 5,853,422, Huebsch et al., and further in view of U.S. Patent No. 6,537,198, Vinlund et al.

Claim 1 Applicant respectfully traverses the rejection of claim 1 as unpatentable over Schweich. Contrary to the Examiner's position, applicant maintains that it would not occur to one of ordinary skill in the art familiar with the teachings of Schweich to modify Schweich's method to arrive at the method of applicant's claim 1.

As recited in claim 1, a method for improving cardiac function comprises inserting a compressive device into a patient in a region including the patient's heart and thereafter operating the compressive device to bring opposite walls of only one ventricle of the patient's heart into at least approximate contact with one another to thereby constrict and close off a lower portion of the one ventricle of the patient's heart.

Schweich is directed in pertinent part to a heart wall tension reduction method that consists of anchoring an outer ventricle wall to the septum via tension members (18). The tension members act as a splint (16) positioned to draw opposite walls of the left ventricle toward each other to reduce the "radius" of the left ventricular cross-section or the cross-sectional area thereof to reduce left ventricular wall stresses. Schweich points out that the disclosed devices could be used to reduce the radius or cross-sectional area of the chambers of a human heart in transverse or vertical directions, or at an angle between the transverse and vertical.

Nowhere does Schweich suggest using tension members to close off the lower portion of one ventricle of a patient's heart. To the contrary, Schweich teaches one of ordinary skill in the

art that the tension members are not used to bring the heart walls together. As set forth in the top four lines of column 12, the tension member of Schweich is exposed to significant blood flows through the left ventricle. Thus, the tension member should a generally small size and shape elliptical cross sectional shape to reduce turbulence or drag over the tension member. If the tension member were to be used to draw the heart walls together, then the tension member would **not** be exposed to significant blood flows through the left ventricle. There would be no need to reduce turbulence or drag over the tension member.

In the light of this teaching and in the absence of a positive suggestion to the contrary, it could not be obvious to one of ordinary skill in the art proceeding from the teachings of Schweich to close off the lower portion of the ventricle by a tension member, as recited in applicant's claim 1. The Examiner's unsupported assertion of obviousness cannot stand in view of the clear intent of Schweich to not close off a portion of a ventricle via a tension member.

Original independent claim 10 and independent claim 18 as amended herein distinguish over Schweich for the reasons discussed above with reference to claim 1.

Claims Rejections - Double Patenting

Claims 1-3, 7, 8, 10, 11, 13, 14 and 16-20 stand provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-19 of copending U.S. Patent Application No. 09/900,126.

Claims 1-3, 7, 8, 10, 11, 13, 14 and 16-20 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,572,529.

Claims 1, 7 and 8 stand rejected under the judicially created doctrine of obviousness type

double patenting as being unpatentable over claims 1 and 19 of U.S. Patent No. 6,258,021.

In response to the rejection of claims 1-3, 7, 8, 10, 11, 13, 14 and 16-20 under the judicially created doctrine of obviousness type double patenting, applicant submits herewith a Terminal Disclaimer duly executed by the undersigned attorney of record for applicant. Also enclosed is a check in the amount of Fifty-Five Dollars (\$55.00) in payment of the fee for submission of a statutory disclaimer.

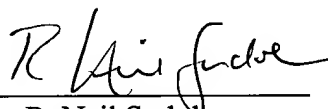
Conclusion

For the foregoing reasons, independent claims 1, 10, and 18, as well as the claims dependent therefrom, are deemed to be in condition for allowance. An early Notice to that effect is earnestly solicited.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,

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